

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

RONNIE TAYLOR)	
Claimant)	
)	
V.)	
)	
LARRY'S SHORTSTOP, INC.)	CS-00-0447-595
Respondent)	AP-00-0448-405
)	
AND)	
)	
KANSAS RESTAURANT & HOSPITALITY ASSOCIATION)	
Insurance Carrier)	

ORDER

The respondent, Larry's Shortstop, and its insurance carrier, Kansas Restaurant & Hospitality Association (Larry's Shortstop), through Ronald Laskowski, request review of Administrative Law Judge Steven Roth's preliminary hearing Order dated December 12, 2019. The claimant, Ronnie Taylor (Taylor), appeared pro se.

ISSUE

The judge concluded Taylor sustained work-related injuries on October 4, 2019, which arose out of and in the course of his employment, including that the work accident was the prevailing factor causing his injuries and need for medical treatment for a left rotator cuff tear, a lumbar strain/sprain, a left inguinal hernia and a left knee contusion. Larry's Shortstop disputes the ruling.

FINDINGS OF FACT

Taylor began working for Larry's Shortstop in April 2019, as a cook.¹

Taylor testified that on October 4, he was carrying burritos in his left hand and walking through the work kitchen when his right foot slipped, his right leg slid forward about 10 inches, and he fell backwards onto his buttock and left elbow. Taylor testified he felt a sharp pain in his low back, with pain in his left shoulder, left hip, left knee and testicles.

¹ The record on appeal is the same as that considered by the judge. All dates refer to 2019, unless noted otherwise.

Video surveillance shows Taylor's right foot sliding forward on the floor, which appears to be concrete, in an area that appeared to have a liquid substance. His left leg went to his left. Taylor landed on his low back or buttocks. Taylor's right elbow hit the back of a coworker's hip or leg just before Taylor's left shoulder hit on the floor. The coworker offered his hand in help, but Taylor remained on the ground before reaching across his body and grabbing a metal rolling bin with his right hand to pull himself up. Taylor's shoes were sliding on the floor when he got up, as if the floor was slippery. After arising, Taylor examined where he fell and gestured with his right foot in the vicinity of the liquid substance. Taylor contended his coworker told him he fell in the same area, but did not clean up the floor.

Taylor went on his own to the Stormont Vail emergency room, where he complained to a triage nurse that he had low back and groin pain after slipping on grease at work and doing the "splits." Taylor was limping on his left leg. He later complained to a physician assistant about left testicular pain and left hip pain. He denied any other injury. There was no mention of a left shoulder injury. The physician assistant examined Taylor and ordered testing. A testicles ultrasound revealed a right hydrocele, a large left varicocele and a left-sided inguinal hernia. An x-ray showed mild degenerative changes in Taylor's hips. Taylor was diagnosed with left hip and left testicle pain, right hydrocele and an inguinal hernia. Taylor was discharged and told to take Tylenol or ibuprofen and ice affected areas.

On October 5, Taylor told his supervisor what happened and was referred for medical treatment.

On October 8, Taylor began treating with Holly Johnson, PA-C. Taylor voiced various complaints generally consistent with what is listed above, including limping on his left leg. He denied preexisting symptoms and attributed his injuries to his work accident. Taylor was diagnosed with left testicular pain, left shoulder strain, left knee strain, left groin strain, low back strain and contusions. For several weeks, PA Johnson provided conservative treatment, including physical therapy, medication and diagnostic testing, including MRIs of Taylor's left shoulder and lumbar spine. The shoulder MRI revealed findings suspicious of a nearly full-thickness tear of the left supraspinatus, possible small undersurface tear of the infraspinatus and severe degeneration of the glenohumeral joint. The lumbar spine MRI showed mild disc bulging at multiple levels.

PA Johnson's October 15 report noted Taylor previously had lumbar spine and left elbow x-rays following a fall at work in 2013. While Taylor said he had to get a cane to walk, he did not have a cane at the appointment. As of October 25, Taylor reported to PA Johnson that he was using a cane. PA Johnson's records show Taylor would frequently direct profanity to her (Taylor admitted using profanity in general conversation, but denied cussing at PA Johnson). On November 5, PA Johnson noted Taylor's complaints were diffuse, vague and unlikely all related to his work incident.

On November 11, 2019, PA Johnson addressed prevailing factor, stating:

It is in my medical opinion, based upon my education, training and experience, and within reasonable medical probability that the work incident that occurred on 10/04/2019 is not the prevailing factor for the patient's reported symptoms. Mr. Taylor describes severe pain that is out of proportion to objective findings including those seen on exam and MRI. There have been many behavioral signs indicating symptom magnification that also directly contradict the objective findings. Additionally, the mechanism of injury is not consistent with his reports of persistent, worsening all over severe body pain. While his fall at work may have caused an exacerbation of multiple chronic conditions, I do not believe it is the prevailing factor for his continued symptoms.²

A physical therapy record dated November 26 indicated Taylor was seen using a cane and walking normally to the clinic, including ascending a curb, but his limp increased when entering the clinic. Taylor refused to perform a number of therapies, such as squatting and maneuvering stairs.

At his former attorney's request, Taylor saw Rodney Bishop, M.D., on November 25. The doctor reviewed medical records and performed a physical examination, but he did not review the surveillance video. Taylor told Dr. Bishop that he did the "splits" when he fell. Taylor denied preexisting conditions that he claimed were injured in the accident. Dr. Bishop diagnosed Taylor with a left rotator cuff tear, a lumbar strain/sprain with nonverifiable radiculitis, a left inguinal hernia and a left knee contusion. Dr. Bishop stated the prevailing factor for Taylor's diagnoses and his need for additional medical treatment was his slipping on grease and falling at work.

At Larry Shortstop's request, Chris Fevurly, M.D., reviewed records and the surveillance video on December 8. The doctor stated:

After looking at the video surveillance which shows the claimant essentially sit down without high impact or direct trauma to his left arm or shoulder, it is probable that there is marked symptom magnification and the progression of his physical symptoms within four days of the event is consistent with probable intentional misrepresentation of his complaints and alleged injuries. The fall would not cause the findings on the MRIs and these conditions are age-related degenerative in nature and not trauma related.

The video speaks for itself. The fall would not cause significant physical injuries.³

At the hearing, Taylor denied prior symptoms in his low back, left shoulder, left hip, left knee or testicles, but later acknowledged a prior back condition in 2012 or 2013.

² P.H. Trans., Cl. Ex. A-2 at 8.

³ *Id.*, Resp. Ex. B-2 at 2.

Larry Jones, the president of Larry's Shortstop, testified no employee advised him that Taylor's alleged accident was in any way deliberate or intentional. His knowledge of what occurred is based on what is depicted in the surveillance video.

Taylor was questioned if he brought his workers compensation claim because he was upset following a recent verbal confrontation with Mr. Jones that his work hours might get reduced. Taylor answered in the negative. Mr. Jones never testified regarding any such conversation nor suggested Taylor was a disgruntled employee.

Judge Roth's Order stated the video "quite clearly captures" Taylor falling on the kitchen floor and "nothing inherently suspicious or staged about this fall,"⁴ and it was impossible to see the condition of the floor. Despite noting Taylor's overly emotional and dramatic demeanor at the hearing might signal symptom magnification, the judge found the worker was injured as alleged. Finally, the judge noted no evidence Taylor was injured elsewhere.

The written arguments of the parties are contentious. Larry's Shortstop argues:

- Taylor's injury did not arise out of and in the course of his employment, including that the work accident was not the prevailing factor causing his injury and need for medical treatment.
- Taylor either feigned the slip and fall or deliberately caused his injuries, and the surveillance video clearly and convincingly shows the accident was fake, fraudulent, bogus and contrived – a charade – because Taylor bent his knees into a squatting position before sitting down and then slowly and deliberately rolling his upper body to the floor.
- Taylor's symptoms are related to a preexisting condition and he was dishonest by failing to tell medical providers about a prior back injury before admitting in court that he injured his back in 2012 or 2013.
- The judge's decision was not based on the evidence, but because he was swayed by Taylor's emotional testimony.

Taylor maintains the Order should be affirmed. He denies any dishonesty and noted the judge found his testimony to be truthful. Taylor accuses opposing counsel and the medical experts not supporting his claim as "totally ridiculous"⁵ and money-driven. He asserts they all should lose their professional licenses. Taylor generally denies preexisting conditions, noting he was able to perform physical work tasks before his work injury.

⁴ Judge's Order at 4.

⁵ Taylor's Appeal Brief at 5.

PRINCIPLES OF LAW

K.S.A. 44-501b states an employer is liable to pay compensation to an employee who proves personal injury by accident arising out of and in the course of employment. Such statute and K.S.A. 44-508(h) state the worker's burden is based on the entire record under a "more probably true than not true" standard. Whether an accident arises out of and in the course of a worker's employment depends upon the facts peculiar to the particular case.⁶ An employer must prove any affirmative defenses.⁷

K.S.A. 44-501(a)(1)(A) states: "Compensation for an injury shall be disallowed if such injury to the employee results from [t]he employee's deliberate intention to cause such injury[.]"

K.S.A. 44-508 states, in part:

(f)(2) An injury is compensable only if it arises out of and in the course of employment. . . .

(B) An injury by accident shall be deemed to arise out of employment only if:

(i) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and

(ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

(3) (A) The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include:

(i) Injury that occurred as a result of the natural aging process or by the normal activities of day-to-day living;

(ii) accident or injury that arose out of a neutral risk with no particular employment or personal character;

(iii) accident or injury that arose out of a risk personal to the worker; or

(iv) accident or injury that arose either directly or indirectly from idiopathic causes.

⁶ See *Messenger v. Sage Drilling Co.*, 9 Kan. App. 2d 435, 680 P.2d 556, *rev. denied* 235 Kan. 1042 (1984).

⁷ See *Anderson v. PAR Electrical Contractors, Inc.*, No. 118,999, 2018 WL 6074279 (Kansas Court of Appeals unpublished opinion filed Nov. 21, 2018).

. . .

(g) "Prevailing" as it relates to the term "factor" means the primary factor, in relation to any other factor. In determining what constitutes the "prevailing factor" in a given case, the administrative law judge shall consider all relevant evidence submitted by the parties.

The Board often gives some deference to a judge's findings and conclusions concerning credibility when the judge was able to observe the testimony in person.⁸

ANALYSIS

Larry's Shortstop raises some valid concerns, but the record establishes this is a compensable claim.

The judge viewed the surveillance video and concluded Taylor was injured at work as alleged, despite the possibility he is exaggerating his symptoms.

This Board Member has carefully reviewed the evidence. The surveillance video does not depict Taylor simply squatting before sitting on the floor and laying down or rolling over. Instead, the video depicts Taylor's right foot sliding forward on the floor. Contrary to the judge's interpretation of what is seen in the surveillance video, the undersigned concludes there is a spot on the floor that appears to be a liquid substance and that such substance caused Taylor's right foot to slip forward (as indicated in the "FACTS" section) and made him fall to the floor.

Like the judge, the undersigned Board Member does not view the accident as an intentionally staged ruse. The injury by accident arose out of and in the course of Taylor's employment. While the evidence is conflicting regarding causation, Taylor proved by a preponderance of the credible evidence that his injuries arose out of and in the course of his employment, including the prevailing factor requirement. The greatest factor in Taylor's favor is the judge's first-hand view of the testimony and his legal conclusion that such worker was injured as alleged.

CONCLUSION

Taylor proved his injuries by accident arose out of and in the course of his employment, including that the accident was the prevailing factor as noted in K.S.A. 44-508(g).

⁸ See *Foy v. Kansas Coachworks, LTD*, No. 1,051,265, 2014 WL 1758032 (Kan. WCAB Apr. 21, 2014).

WHEREFORE, this Board Member affirms the Order dated December 12, 2019.⁹

IT IS SO ORDERED.

Dated this _____ day of February, 2020.

HONORABLE JOHN F. CARPINELLI
BOARD MEMBER

Electronic copies via OSCAR to:
Ronald Laskowski
Honorable Steven Roth

with a copy sent via USPS mail to:
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⁹ These preliminary hearing findings and conclusions are not final nor binding and may be modified upon a full hearing. This review of a preliminary hearing Order has been determined by one Board Member, unlike appeals of final orders, which are considered by the entire Board.